

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EON CORP. IP HOLDINGS LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 10-812-RGA
	:	
FLO TV INCORPORATED, et al.,	:	
	:	
Defendants.	:	

ORDER


On July 12, 2011, this Court dismissed the indirect infringement claims in this case. (D.I. 105 & 106). The order of dismissal did not specify whether the dismissal was with or without prejudice. (D.I. 106). My review of the Memorandum Opinion persuades me that the dismissal should have been without prejudice.

On September 19, 2011, the Plaintiff filed a Motion for Leave to File a Third Amended Complaint. (D.I. 177). The matter has been fully briefed. (D.I. 178, 194, 201).

The Court's prior dismissal was based upon one deficiency in the Second Amended Complaint. The Plaintiff had not alleged "sufficient knowledge of the [patent] at the time of the alleged infringing actions." (D.I. 105, p. 8).

The proposed Third Amended Complaint alleges knowledge dating from the time of the service of the original complaint upon each defendant. This theory was not addressed in the Court's earlier opinion. Alleging that a defendant was served with a complaint for patent infringement is a sufficient factual allegation to make a claim of knowledge plausible from that date. Thus, the Plaintiff's proposed amended complaint has adequately addressed the one issue that was the basis for the Court's earlier decision.

Therefore, this 9th day of July 2012, I will **GRANT** the Plaintiff's motion. (D.I. 177).


United States District Judge